IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 293 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UMARGADH GROUP SEVA SAHKARI MANDALI LIMITED

Versus

STATE OF GUAJRAT

Appearance:

None present for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

MR SHIRISH JOSHI for Respondent No. 5

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/06/2000

ORAL JUDGEMENT

1. Shri R.R. Raval, advocate states that Shri Harin P. Raval is not the counsel who is appearing in this matter for the petitioner. He has been replaced by Mr. D.P. Kinariwala. He states that now Shri D.P.

Kinariwala is also not appearing but Mr. Naik is the advocate who is to argue the matter for the petitioner. On being asked by the court, Shri Raval states that Shri Naik has not filed his vakalatnama so far, for the petitioner. When Shri Naik has not filed the vakalatnama, it is difficult to accept him to be an advocate who is appearing for the petitioner, more so , a ground to adjourn the matter. Shri R.R. Raval states that Shri Naik is busy in another court and he will remain busy for the whole day. This is also, leaving apart what is stated earlier, cannot be said to be a good ground for adjournment. When we are having three days for hearing, the members of the Bar have to make their own arrangement for that. The matter in other Courts of an advocate may be taken care of where he remains busy in one court. There are many courts working and with an advocate, on a day, there may be so many matters on the Board of different courts and in case it is to be accepted that he will remain busy for whole day in a particular court then in all the courts if other matters are to be adjourned then this very system which has been now started in the Court so that the old matters may be taken care of and decided will become nugatory, meaning thereby, ineffective. Request made for adjournment, for the reasons aforesaid, cannot be granted.

2. Heard the learned counsel for the respondents and perused the special civil application. With the help of the learned counsel for the respondent, read the orders of the authorities below.

3. The petitioner is a cooperative society registered under the provisions of the Gujarat Cooperative Societies Act, 1961. It is classified as Class "A" Society for audit purposes. It is alleged to be in existence since 6-10-1950. The promoters of the respondent No.5 proposed for registration of the respondent No.5 society. On coming to know of this move of the promoters of the respondent No.5, the petitioner on 16th January, 196 raised its objections. The proposal of the promoters of the respondent No.5 was considered by the Subcommittee of Ahmedabad District Panchayat and it came to be rejected on 10th April, 1996. It is the grievance of the petitioner that the respondent No.4 straightaway despite of the aforesaid recommendations of the Sub-Committee of the Ahmedabad District Panchayat under a political pressure granted registration to the respondent No.5-Society vide order dated 28th April, 1997. The petitioner being aggrieved and dissatisfied with the aforesaid action and order of the respondent No.4 filed an appeal under section 53 of the Act before

the respondent No.3. Prayer has also been made in the appeal for grant of stay and on 19th June, 1997, the appellate authority has been pleased to grant this prayer of the petitioner and accordingly, this stay has been granted. On 2-9-1997, the appellate authority allowed the appeal of the petitioner and set aside the order of registration of the respondent No.5 Society by quashing and setting aside the order of the respondent No.4 dated 28th April, 1997. The respondent No.5 has taken up this mater in revision application under section 155 of the Act before the respondent No.2. The revision application was admitted and the order to maintain status-quo has also been made by way of interim relief. On 6th January, 1998, this revision application came to be allowed and the order of the respondent No.3 dated 2-9-1997 was quashed and set aside and that of respondent No.4 dated 28-4-1997 was restored. Hence, this special civil application.

4. All the objections raised by the petitioner against the registration of the respondent No.5 -Society have not been accepted and rightly so. I am in agreement with the findings recorded by the revisional authority. The petitioner has failed to establish that the Chief Promoter of the respondent No.5-Society has not paid the loan of the petitioner-Society. The petitioner-Society filed a Lavad suit for recovery of that loan against the Chief Promoter of the respondent No.5-Society but that Lavad suit was dismissed by the Board of Nominees. Against the award an appeal was filed and the appeal was also dismissed. The petitioner has not taken up this matter further and as such the judgment of the Board of Nominees attained the finality. Whatever dues which were alleged to be not paid by the Chief Promoter of the respondent No.5 to the petitioner in view of the fact that for recovery of the same, suit has been dismissed this objection raised has rightly been not accepted by the respondent No.3 and the respondent No.1. Another objection that the Chief Promoter is not residing within the area of operation of the respondent No.5 -Society has not been accepted. It is a question of fact and on which a finding of fact has been recorded against the petitioner by the authorities to which no exception can be made. This Court sitting under Article 226 or 227 of the Constitution cannot reappreciate the evidence as well as to give its own decision thereafter. Even if on one set of evidence, two views are possible, it is not open to this court to interfere with the order. Further this court cannot go on the question of sufficiency of the evidence also. Judicial review under Article 226 or 227 of the Constitution is only permissible to this court of

decision making process.

5. Another objection raised that the area of operation of these two Societies is same, it is suffice to say that this objection has rightly been not accepted. The petitioner-Society is a Group Seva Sahakari Mandali Ltd. and its operational area is in more than one village. This is not in dispute. In view of this fact, it is difficult to accept that the area of operation of the two Societies is same.

6. Another objection raised that in the same area, the authority cannot register another Society is also without any substance and merits. Here, reference may have to the provisions of section 4 of the Gujarat Cooperative Societies Act, 1961. Section 4 of the Act, reads as under:

> Societies which may be registered:- A Society, which has as its object the promotion of the economic interests or general welfare of its members or of the public, in accordance with cooperative principles, or a society established with the object of facilitating the operations of any such society, may be registered under this Act;
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> Provided that it shall not be registered if, in the opinion of the Registrar, it is economically unsound or its registration may have an adverse effect upon any other society, or it is opposed to or its working is likely to be in contravention of public policy.

7. In this provision, a discretion has been given to the authority and it may decline to register the Society where it proposes to work in the same area where there is already another Society and registration of which may adversely affect its functioning. It is only a discretion of the authority and looking to the fact that the petitioner-Society is working since 1950, after about 46 years of registration thereof, if another Society proposes for its registration, I fail to see any justification in the objection of the petitioner against the same. Looking to the facts of increase in population etc. the necessity and need of another Society may be there in the same area. Otherwise also, the petitioner has failed to show how any prejudice has been caused to its working by registration of this Society.

8. In the proceedings under Article 226 or 227 of

the Constitution, the conduct of the party approaching to this court for relief under its extraordinary jurisdiction is very relevant and material. If a litigant has not come up with clean hands or he has not acted fairly, reasonably and as a law abiding citizen then the Court on satisfaction thereof may decline to grant relief to him. In this case, I find after hearing the learned counsel for the respondents that the petitioner-Society has made an attempt to create hardships and obstruction in the way of the respondent No.5-Society in its proper management and functioning. First attempt has been made by the petitioner in this petition to get interim relief against the functioning of the Society but that has not been granted. The petitioner has not felt satisfied and contended as its only intention, object and purpose is to see that no other Society may come up in the area, that order of the learned Single Judge was taken in appeal but the L.P.A. filed by the petitioner has also been rejected. When this attempt of the petitioner to stop respondent No.5-Society from functioning failed then it made another attempt. This time the petitioner filed a Lavad suit before Board of Nominees and therein prayer has been made that the Ahmedabad District Cooperative Bank by restrained from releasing any loan to the respondent No.5-Society. Though it is not necessary to express any final opinion but prima-facie in the facts of this case I am satisfied that this is nothing but only an attempt on the part of the petitioner to abuse the process of the court. Be that as it may. The prayer made by the petitioner for grant of interim relief was rejected by the Board of Nominees. The petitioner has taken up this matter in appeal. In appeal though initially interim relief was granted but after hearing the respondent No.5, the same has been vacated. Then the matter was taken up in revision but in the revision also interim relief has not been granted. The orders passed by the authorities below i.e. the respondents No.1 and 3 are just and reasonable orders and in furtherance to the object and purpose of Cooperative movement in the State, no interference of this Court is called for therein.

9. As a result of the aforesaid discussion, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted stands vacated. In the facts of this case, no order as to costs.

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